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Attorneys for Defendant

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

YA-WEN HSIAO,	) Civil No. 1:18-cv-00502-JAO-KJM
	)
Plaintiff,	) DEFENDANT'S SCHEDULING
	) CONFERENCE STATEMENT;
v.	) CERTIFICATE OF SERVICE
	)
ALEXANDER ACOSTA,	) DATE: February 25, 2018
Secretary of Labor,	) TIME: 9:30 a.m.
	) JUDGE: Honorable Kenneth J.
<u>Defendant.</u>	) Mansfield

**DEFENDANT'S SCHEDULING CONFERENCE STATEMENT**

Defendant Alexander Acosta, Secretary of Labor, through undersigned counsel, submits his Rule 16 Scheduling Conference Statement in the above-referenced matter.

1. NATURE OF THE CASE

Plaintiff brings this civil action against Defendant under the Administrative Procedure Act ("APA"), 5 U.S.C. § 702 *et seq.*, and the Fifth Amendment of the Constitution, alleging, among other things, that (1) the United States Department of Labor's ("DOL") denial of a labor certification filed by the University of Hawaii's John A. Burns School of Medicine "on behalf of Plaintiff," and the Board of Alien Labor Certification's ("BALCA") affirmance of DOL's denial is an abuse of discretion; (2) the En Banc procedures adopted by BALCA are arbitrary, capricious, and violate the APA; and that (3) BALCA's adjudication violated Plaintiff's Fifth Amendment due process rights.

2. STATEMENT OF JURISDICTION

Defendant disputes that the Court has subject matter jurisdiction over this matter under Article III of the Constitution, as Plaintiff fails to meet her burden of showing that she has the requisite standing for the relief she seeks. *Summers v. Earth Island Inst.*, 129 S. Ct. 1142, 1149 (2009). Plaintiff also fails to establish prudential standing. *United*

*States v. Mindel*, 80 F.3d 394, 397 (9th Cir. 1996). Defendant does not dispute venue at this time.

3. DEMAND FOR JURY TRIAL

No jury trial has been demanded in this case.

4. APPROPRIATENESS OF DISCLOSURES

Defendant agrees with Plaintiff that as this matter is an action for review of the administrative record, initial disclosures pursuant to the Fed. R. Civ. P. 26 and LR26.1 are not required. Defendant will obtain and serve the administrative record on Plaintiff in a timely manner, and does not oppose Plaintiff's request to have an opportunity to ask that the record be supplemented, if necessary, within 30 days of receiving the record.

5. DISCOVERY COMPLETED/IN PROGRESS; MOTIONS PENDING & DATES

Defendant agrees with Plaintiff that as an action for review of the administrative record, discovery is not appropriate for this case. Plaintiff's challenge to the legality of rules and procedures does not involve any discovery.

6. APPROPRIATENESS OF SPECIAL PROCEDURES

No special procedures appear necessary.

7. RELATED CASES

Defendant is not aware of any related cases.

8. ANY ADDITIONAL MATTERS

No additional matters need be raised at this time.

Dated: February 14, 2019

Respectfully submitted,

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By: /s/ Harry Yee  
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Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that, on February 14, 2019 by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served by First-Class Mail:

Ya-Wen Hsiao  
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February 14, 2019

/s/ Samuel P. Go

Samuel P. Go

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